

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,
ex rel. EUGENIA SMITH, et al.,

Relators,

:

Case No. 3:97-cv-307

:

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

-vs-

EMERY WORLDWIDE AIRLINES,
INC., et al.,

:

Defendants.

ORDER DENYING MOTION TO COMPEL

This case is before the Court on Defendants' Motion to Compel the Production of Documents (Doc. No. 189) and Relator Smith's Memorandum in Opposition (Doc. No. 204). Defendants have not filed a reply memorandum in support and the time within which to do so under S. D. Ohio Civ. R. 7.2 has expired.

The Motion to Compel is denied because it is not accompanied by the required affidavit under Fed. R. Civ. P. 37 and the documents sought to be protected under a claim of privilege are either protected by attorney-client privilege or by work product protection.

May 11, 2005.

s/ **Michael R. Merz**
Chief United States Magistrate Judge